STATE OF ILLINOIS

ILLINOIS COMMERCE COMMISSION

Illinois Commerce Commission	)	
On Its Own Motion	)	
	)	
vs.	)	Docket No. 03-0703
	)	
Northern Illinois Gas Company	)	
d/b/a Nicor Gas Company	)	
	)	
Reconciliation of revenues collected under	)	
gas adjustment charges with actual costs	)	
prudently incurred.	)	

INITIAL BRIEF OF NICOR GAS COMPANY

April 29, 2015

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Pursuant to Section 200.800 of the Illinois Commerce Commission's ("Commission") Rules of Practice, 83 Ill. Adm. Code § 200.800, and in accordance with the schedule established by the Administrative Law Judge ("ALJ"), Northern Illinois Gas Company d/b/a/ Nicor Gas Company ("Nicor Gas" or the "Company") hereby submits this Initial Brief.

I. Introduction

During 2003, Nicor Gas supplied gas to its sales customers reliably and at a reasonable cost properly calculated and recovered through Nicor Gas' Purchased Gas Adjustment ("PGA") rider mechanism. Nicor Gas' management took lawful and prudent steps to make that possible in 2003, and to assure that its storage assets were protected and preserved to meet its customers' then-current and future needs – storage assets that provided critical deliverability to the Company's customers during the 2013-2014 heating season. Nicor Gas also properly accounted for its gas costs and correctly calculated the charges under its PGA. There is no legal or factual basis for any disallowance.

The purpose of this PGA reconciliation proceeding is to determine if the gas costs charged to sales customers in 2003 were incurred lawfully and were correctly calculated and assigned to customers. The Commission has held and the witnesses confirm that the standard under which the Company's actions are reviewed is prudence. A prudence review is conducted under specific rules, well-established by the Commission and the courts. Under that standard, any decision by management can be imprudent only if it was unreasonable based on information available to management at the time the decision was made. A claim made that some alternative decision could have yielded a better result when viewed after the fact – even one not based on otherwise faulty premises or deductions – is legally barred. Nor can a prudence disallowance be based on allegations that a utility did not conform to rules or decisions that were not applicable, or even in existence, at the time of the decision.

Here, little of what Nicor Gas proved is contested. Nicor Gas correctly accounted for its gas costs, and correctly calculated the charges under the PGA. And, while Staff witness Dr. David Rearden relied on Commission decisions and tariffs not in existence, or applicable to actions, in 2003, the record leaves no doubt that Nicor Gas acted lawfully and as permitted under the decisions of, and tariffs approved by, both the Commission and the Federal Energy Regulatory Commission ("FERC") that were in effect in 2003. Nicor Gas met its obligations to provide reliable service to its customers, and there is no evidence that its gas supply planning process was flawed. Operationally, Staff engineer Mark Maple specifically concurred that the Company's actions were prudent. There also is no evidence that any Hub transaction actually affected in any way the manner in which sales customers were supplied with gas or the cost of that gas.

Nonetheless, two witnesses – CUB accountant Jerome Mierzwa and Staff economist Dr. David Rearden – ***infer*** that Nicor Gas' lawful Hub operations increased the cost of gas supplied to sales customers.[1] To do this, they conclude – albeit using different methodologies – that because Hub loans were made and outstanding during the 2002-2003 heating season, sales customers had to be served using more flowing gas. They then each look to *post hoc* data about flowing gas prices and, although they disagree on the calculation, claim that this hindsight comparison shows imprudence. But, their claim is not supported by the evidence, and their inference of imprudence breaks down legally and factually at several points. In particular:

- Nicor Gas developed in advance a plan to supply gas to its sales customers in 2003. That plan included gas acquisition as well as management of the Company's storage assets, both contract and owned. It considered the capabilities and limitations of Nicor Gas' delivery system and of the pipelines that supply the region, and additionally considered the Company's operational needs, including the maintenance of required gas reserves throughout the heating season, and the critical need to "cycle" gas storage fields to protect and preserve their function. As it must, the plan also considered the rights of Nicor Gas' transportation customers who also use its delivery and storage facilities, and whose behavior can profoundly affect both.

- To use and protect those assets, Nicor Gas used a full range of tools, including the "Hub," authorized under tariffs approved by the Commission and FERC. No witness could point to any information available to or considered by Nicor Gas when the decisions were made to engage in Hub activities showing that Nicor Gas' management acted objectively unreasonably. No witness with any operational experience or qualifications – Company, Staff, or intervenor – criticized those plans or their execution. It is not lawful under the prudence standard to infer that some decision was imprudent because, in hindsight, a theoretically cheaper means of supplying gas can be assembled on paper.

- The key premise of witnesses Mierzwa and Rearden – that Hub activities required Nicor Gas to use more flowing gas to serve sales customers – is contradicted by the facts. The evidence shows that Nicor Gas could have withdrawn additional gas from storage to serve sales customers in the amounts, and during each of the

[1] The Hub is a collection of services that Nicor Gas offers to end-user, local distribution companies and other customers that permit those customers to store and transport gas and, in some instances, to borrow gas, using the Nicor Gas system. Sherwood Sur., Nicor Gas Ex. 6.0R, 7:129-131. These services are provided pursuant to Commission- or FERC-approved tariffs.

months, about which those two witnesses complain. The fact that Nicor Gas did not withdraw that gas has no relationship to Hub activities.

- There is no evidence that Nicor Gas' actions were contrary in any way to the Hub service tariffs the Commission and FERC approved, or the Commission's Orders governing Hub revenues. Both the Commission and the FERC authorized Hub loans and understood that they would use stored gas. The regulators approved them, in part, because of the benefits the Hub provides, and the Commission required Nicor Gas to credit test year net revenues back to customers. Nicor Gas did so. Arguing that Hub loan activities *automatically* displace sales customers' use of stored gas and that customers should receive both credits and disallowance of the assumed increase in cost is an improper attack on those decisions.

- The proper application of gas cost accounting separates the gas costs sales customers are responsible for from the flow of gas molecules; as Mr. Mierzwa testified, gas molecules have no "color." Tr. 215:3-20 (Mierzwa). Even assuming, *arguendo*, that Nicor Gas did not act in an operationally prudent manner, Nicor Gas' proper use of gas cost accounting would have insulated sales customers from the effect of the Hub loans.

- The Commission already has rejected an almost identical claim by Mr. Mierzwa in a proceeding involving the Company's Gas Cost Performance Program ("GCPP"). *Illinois Commerce Comm'n v. Northern Illinois Gas Company d/b/a Nicor Gas Company*, Docket Nos. 01-0705, 02-0067, 02-0725 (consol.), Order (June 5, 2013) ("GCPP Order"). In that case, Mr. Mierzwa argued that Nicor Gas improperly "provided Hub services by withdrawing sales customers' gas from storage and loaning it to third-parties, the affect of which was to increase the gas costs of sales customers." GCPP Order at 9. The Commission rejected Mr. Mierzwa's claims that the Company improperly manipulated its storage inventory, including by providing Hub services, concluding that "no definitive evidence was presented to show that this component of the GCPP was not operated as intended." GCPP Order at 16-17. Mr. Mierzwa also failed to present definitive evidence here. Indeed, his direct testimony is nothing more than a reprise of his failed position in the GCPP proceeding. *Cf*. Mierzwa Dir., CUB Ex. 1.0, 3:49-67, 4:77-6:127 with Mierzwa Reb., CUB Ex. 2.0 Rev., 42:944-45:1007 in Docket Nos. 01-0705, 02-0067, and 02-0725 (consol.).

In sum, planning to serve customers reliably over a heating season and preserving the ability to do so in the future is more than just choosing the cheapest source of spot gas. Nicor Gas planned properly and executed successfully and reliably, supplying its customers with gas at fair, market prices. It accounted for its gas costs correctly, and credited any net Hub revenues back to customers just as ordered. Staff's and CUB's challenges to the contrary are based on hindsight, ignore operational realities, and rely on Orders and principles not applicable to 2003. They should be rejected.

II. Statement of Facts

This is the first PGA proceeding for Nicor Gas following the conclusion of the Company's GCPP, which was effective from 2000-2002. The Commission resolved all matters relating to the operation of the GCPP in its final Order in Docket Nos. 01-0705, 02-0067, and 02-0725 (consol.).

On November 12, 2003, the Commission entered an Order initiating this proceeding. *Illinois Commerce Comm'n v. Northern Illinois Gas Company d/b/a Nicor Gas Company*, Docket No. 03-0703, Order (Nov. 12, 2003) ("Initiating Order"). Among other things, the Initiating Order required Nicor Gas to "demonstrate that its gas supplies purchased during the reconciliation period were prudently purchased." Init. Order at 2.

Pursuant to the Initiating Order, Nicor Gas filed its direct testimony on April 1, 2004. This proceeding was then effectively stayed pending the Commission's resolution of the GCPP proceeding. Subsequent to the conclusion of the GCPP proceeding, Nicor Gas filed its revised and supplemental direct testimony on August 29, 2013. Nicor Gas' direct testimony explained why the Company's 2003 gas purchasing activities were prudent and reasonable, and provided a description of the Company's supply operations, recoverable gas costs for the 2003 Gas Supply Cost ("GSC") reconciliation year, storage utilization policy, and the Company's gas price risk hedging policy and practices. Gilmore Direct, Nicor Ex. 1.0R. Further, Nicor Gas described the reconciliation of its GSC revenues collected with its actual cost of gas distributed, as recorded on the books of the Company for the reconciliation year. Buckles Direct, Nicor Ex. 2.0.

A. Rider 6, Gas Supply Cost

The Commission approved Nicor Gas' Rider 6, Gas Supply Cost ("Rider 6") as compliant with the Commission's Purchased Gas Adjustment Clause requirements in Docket No. 94-0403. Buckles Dir., Nicor Ex. 2.0, 3:52-54. Rider 6 – which is intended to recover from sales customers Nicor Gas' net gas supply cost without markup or profit – prescribes the method of computing Nicor Gas' end-user charges, or rates, for the recovery of the Company's Cost of Gas Distributed ("GSC charges"). These charges are designed to recover the costs the Company incurs for quantities of gas that the Company purchases, transports, stores and sells for the purpose of serving its end-user customers. *Id.* at 3:43-49. The gas costs that are recovered through Rider 6 are: (1) gas costs based on volumes of gas purchased from suppliers, referred to as Commodity Gas Costs ("CGC"); and (2) gas costs other than those defined as commodity related, which include costs incurred from demand charges as well as charges for transportation and storage, referred to as Non-Commodity Gas Costs ("NCGC"). *Id.* at 3:56-60.

Rider 6 provides for an annual reconciliation, which compares the revenue the Company recovered under its Rider 6 charges with the Company's actual GSC Charges for the preceding year. Ill.C.C. No. 16 - Gas, 4th Rev. Sheet No. 62. If Nicor Gas' Rider 6 charges recovered a different amount of revenue than the Company's actual GSC Charges, then the Rider 6 charges for the following year are set at a level to ensure that the difference is either returned to or collected from customers, depending on the over- or under-recovery for that year. Buckles Dir., Nicor Ex. 2.0, 7:146-8:151.

Nicor Gas provided its annual reconciliation statement for 2003 with its direct testimony. *Id.* at 8:166-167; *see* Attachment BOB-2. The reconciliation identified and incorporated adjustments for 2002, through the Company's 2002 PGA reconciliation reflected in Docket No. 02-0725, which was consolidated with Docket No. 02-0067, the GCPP proceeding. In light of the adjustments resulting from the 2002 PGA reconciliation, the total net balance to be refunded to customers for the Company's actual GSC Charges for the year 2003 is $16,378,768, reflecting CGC in the amount of $14,664,762 and NCGC in the amount of $1,714,006. Buckles Dir., Nicor Ex. 2.0, 17:347-351; Nicor Gas Ex. 9.1 at page 1.

B. Gas Supply Operations

Nicor Gas utilized both the "spot market" and "firm supply" purchases for its natural gas purchases in 2003. The spot market is a market characterized by short-term contracts for specified volumes of gas, with buyers bidding freely for available supplies from sellers that include gas producers and marketers. Gilmore Dir., Nicor Ex. 1.0R, 8:157-159. Firm supply refers to firm gas supply purchased through agreements with producers and marketers and the cost of firm pipeline transportation service held by Nicor Gas. Firm supply is considered more reliable because the contract typically contains charges for non-performance. *Id.* at 8:162-165. During the 2003 reconciliation year, approximately 53% of the Company's 2003 gas purchases were from the spot market, and approximately 47% were firm supply purchases. *Id.* at 4:79-80.

Under Nicor Gas' gas storage and transmission system network, the Company has the ability to adjust the level of its gas purchases among suppliers and type of supply, within the constraints of its pipeline contract entitlements and the Company's gas system facilities, to take advantage of available price differences. *Id.* at 4:80-83. This is largely accomplished by Nicor Gas' ability to inject gas into its Company-owned underground storage reservoirs and to deliver gas supplies to its customers from a number of different pipelines, which allows Nicor Gas flexibility in its purchasing and delivery activities. *Id.* at 4:83-86. This inventory activity is reflected in the Company's annual reconciliation statement for 2003 as line items that reflect the Company's 2003 gas storage activity (injections and withdrawals) for its own storage reservoirs and for purchased storage arrangements with Natural Gas Pipeline Company of America ("NGPL"). *Id.* at 6:120-126.

With respect to the 2003 reconciliation period, Nicor Gas utilized a "best-cost" gas purchasing strategy, wherein monthly purchase decisions were made within the limits of available gas supply and transportation agreements in force, within the limits of Nicor Gas' general system facilities, and within the context of long-term decisions to change or revise gas supply and transportation agreements. *Id.* at 9:174-179. Nicor Gas establishes its winter season supply plans well in advance of the start of the winter heating season, which begins around November 1st of each year. Sherwood Sur., Nicor Gas Ex. 6.0R, 10:188-190. Thus, for the 2003 reconciliation year, Nicor Gas established its winter season supply plans prior to the fall of 2002. *Id*. at 21:432-434; Gulick Sur., Nicor Gas Ex. 7.0R, 15:316-16:319.

The Company plans for its gas supply purchasing requirements by evaluating and estimating four parameters. First, the Company projects its peak day and monthly sendout over the planning horizon. Gilmore Dir., Nicor Ex. 1.0R, 9:187-188. Second, the Company must consider the operational needs of its on-system storage fields when evaluating the underground gas storage capability to meet both daily and seasonal winter peak loads. As such, the timing of the Company's monthly gas purchases must recognize an appropriate gas storage inventory and injection/withdrawal activity schedule to support design day storage withdrawals and to meet monthly and seasonal storage targets that are intended to maximize overall storage flexibility. *Id*. at 9:188-193. Third, Nicor Gas must determine which supply contracts in its portfolio to utilize, taking into consideration available price information and the need to maintain flexibility to adjust purchases as conditions change. *Id*. at 9:193-195. Finally, given obligations under both FERC- and Commission-approved tariffs, the Company must estimate volumes to be received into its system by third party customers, such as transporting customers and their suppliers, as well as Nicor Gas' Chicago Hub shippers. *Id.* at 9:195-10:198.

Nicor Gas' supply planning includes the allocation of capacity in its on-system storage to transportation customers, who receive distribution service from Nicor Gas and have rights to storage ("transportation customers"), and sales customers, who purchase their gas supply from the Company and the cost of which flows through Rider 6 ("sales customers" or "PGA customers"). Tr. 42:4-7 (Sherwood); Sherwood Sur., Nicor Ex. 6.0R, at 2, fn. 1. Prior to the 2002-2003 winter season, Nicor Gas evaluated transportation customer activity and estimated that transportation customers were likely to leave allocated inventory space unfilled going into that winter. Sherwood Sur., Nicor Ex. 6.0R, 12:220-227. The Company's evaluation was based, in part, on data reflecting that transportation customers historically had not injected physical gas into the Company's storage fields equivalent to their assigned capacity. *Id.* at 22:448-450. Similarly, the transportation customers historically had not withdrawn their gas held in on-system storage to a level necessary to meet the operational targets for the amount of gas in storage at the end of the winter season. *Id.* at 22:450-452.

As described in detail herein, the operating characteristics of the Company's aquifer storage fields requires that these fields be fully filled at the time the heating season begins, and sufficiently emptied at the end of the heating season. *Id.* at 22:455-457. Accordingly, Nicor Gas also allocated an interruptible portion of its on-system storage capacity to Hub activities for the 2002-2003 winter season. *Id*. at 10:188-191. This allocated share was a subset of the storage capacity allocated to the Company's transportation customers, and was distinct from the inventory and demand related to sales customers. *Id.* at 10:191-11:193.

C. The Company's Storage Operations

Nicor Gas owns and operates eight aquifer fields, wherein it stores natural gas. Gilmore Reb., Nicor Ex. 4.0, 5:102-105. An aquifer field, or reservoir, is a naturally occurring underground geologic formation that consists of water-filled, porous sandstone layers covered by a solid dome-shaped caprock. Sherwood Sur., Nicor Gas Ex. 6.0R, 19:384-386. When gas is injected into the storage reservoir, water is displaced by the gas from the pores of the sandstone structure, and the pressure in the reservoir rises to levels greater than the reservoir's original pressure. *Id*. at 19:386-388. The displaced water provides pressure that is necessary for Nicor Gas to later withdraw the gas. *Id*. at 19:388-389.

If the gas inventory is not regularly withdrawn and refilled, or "cycled," within these aquifer fields, the physical performance of the fields will decline. Gilmore Reb., Nicor Ex. 4.0, 5:105-106. Specifically, if the gas is not regularly withdrawn from the reservoirs, the pressure in the formation will begin to move toward equilibrium by allowing the water to move back into the gas storage zone. Sherwood Sur., Nicor Gas Ex. 6.0R, 19:389-391. This will harm the future performance of the field, resulting in lower daily withdrawal deliverability and the inability to withdraw all of the gas that was originally injected. *Id*. at 19:391-20:393. Accordingly, cycling the gas in these storage fields is of critical importance to maintain the viability of these storage assets.

Nicor Gas' on-system storage fields are used to: (1) serve a base level of winter load; (2) meet high demand day supply needs through on-system storage withdrawals; (3) serve as an alternate to interstate firm transportation under design load conditions; and (4) balance weather driven load differences from day-ahead supply plans. Sherwood Sur., Nicor Gas Ex. 6.0R, 19:370-375. These storage fields provide numerous benefits to the Company's customers, including ensuring the reliable provision of gas supply, offering flexibility on the Company's transmission and distribution systems, which allow the Company to manage variations in customer demands, and providing a natural price hedge that reduces gas cost volatility. *Id*. at 19:376-382.

With respect to its storage operations, Nicor Gas typically follows a pattern of injecting gas into its storage fields in the summer and withdrawing that gas to serve customers in the winter. Tr. 40:16-20 (Sherwood). The Company's storage operates as a delivery source to customers in the winter when customer demand is high, and injecting gas in the summer avoids additional reservation charges related to the additional firm transportation capacity on interstate pipelines. *Id.* at 41:4-20.

Nicor Gas adheres to a storage utilization policy wherein the Company arranges for gas supplies and storage inventories that are adequate to serve all its customers and to operate its system through each winter season, assuming severe weather occurs. Gilmore Dir., Nicor Ex. 1.0R, 11:234-236. In addition, Nicor Gas supplies firm backup service for many of its transportation customers to the extent they have storage banking rights. *Id.* at 11:236-238. Nicor Gas operates and maintains its system in such a way that unexpected changes in customer usage, often caused by weather, or unexpected changes in third party customer gas receipts can be managed effectively. *Id.* at 11:238-241. In order to maintain the inventory levels and related aquifer pressures necessary to meet peak, seasonal and daily needs, Nicor Gas establishes appropriate storage injection and withdrawal schedules based upon operational experience and historical aquifer performance data. *Id.* at 11:241-12:243. These schedules are designed to maintain the aquifer performance necessary to satisfy design peak day withdrawal requirements through on or about January 20 of each heating season as well as post-design day peak period through March 15, while meeting seasonal withdrawal targets. *Id.* at 12:247-12:251.

D. Gas Accounting

Nicor Gas accounts for its physical underground storage inventories by recording injections (additions), withdrawals (subtractions), and associated costs for any given storage account. Gulick Sur., Nicor Ex. 7.0R, 17:358-18:362. Nicor Gas uses last-in-first-out ("LIFO") accounting on a calendar year basis, so the actual cost of gas withdrawn from storage in February is not known until the end of the calendar year. *Id.* at 18, fn. 37. Although the specific gas molecules associated with a given storage account are indistinguishable from those stored for the account of another party, storage field operators such as Nicor Gas must still account for their customers' activities while managing the physical requirements of their storage facilities. *Id.* at 18:364-369. Importantly, the accounting for the amount of gas held by Nicor Gas' PGA and other storage customers did not change during the 2003 reconciliation period, even where the physical quantity of gas in Nicor Gas' storage fields changed as a result of making Hub loans. *Id.* at 20:398-400.

E. Hub Services

The Hub is a collection of services that Nicor Gas offers to end-user local distribution companies ("LDCs") and other customers that permit those customers to store and transport gas and, in some instances, to borrow gas using Nicor Gas' system. Sherwood Sur., Nicor Ex. 6.0R, 7:129-131. For example, a Hub loan is a service in which gas is delivered from Nicor Gas' system on behalf of a customer on the condition that the customer replenishes the gas at a later date. In contrast, a Hub park refers to a transaction in which a customer delivers gas to Nicor Gas' system for storage and re-delivery at a different time, potentially to a different location. *Id.* at 6, fn. 3-4.

In 2003, Hub services included interstate services offered under the jurisdiction of FERC and intrastate services under the Commission's jurisdiction. *Id.* at 7:131-134. FERC first approved the Company's interstate Hub tariffs in 1992. *Id.* at 7:134-135. Nicor Gas offers intrastate Hub services pursuant to its Commission-approved Rate 21, Intrastate Transportation and Storage Services, which was first approved in 1998. *Id.* at 7:135. The Commission-approved rates and services were contained in an Operating Statement on file with the FERC, and also were subject to FERC review and approval. Gulick Sur., Nicor Gas Ex. 7.0R, 27:498-500. The charges set for Hub services were cost-based, wherein the Company recovered its costs of providing Hub services pursuant to its tariffed charges. Sherwood Sur., Nicor Gas Ex. 6.0R, 8:138-141.

Hub services are subordinate to the Company's firm service obligations as a public utility, and Nicor Gas retains the authority to manage its system and on-system storage to meet the demand of sales, transportation, and Customer Select customers. *Id.* at 25:496-499. Pursuant to its tariffs, Nicor Gas has the right to interrupt Hub services when it is determined that the provision of meeting firm services requirements may be compromised, such as when the Company calls a Critical Day pursuant to tariff. *Id.* at 26:501-504. As it relates to the 2003 reconciliation period, Nicor Gas called Critical Days on March 2 and 3, 2003, during which time Hub services were interrupted *Id.* at 26:504-505.

Nicor Gas distinguishes between those services that qualify as "PGA Hub" services, which are services whose revenues flow through Rider 6 and offset the cost of gas for sales customers, and "non-PGA Hub" services, which are services whose revenues were credited to base rates and did not flow through Rider 6. *Id.* at 8, fn. 5-6. In 2003, the PGA Hub services included priority interruptible service, offered pursuant to the FERC tariff, and there was no loan activity related to these services. *Id.* at 8:145-147. In contrast, the non-PGA Hub services in 2003 included parks, loans, and transportation services governed under both the FERC- and Commission-approved tariffs. *Id.* at 8:148-149.

Nicor Gas entered into Hub loans in 2003 as a means of supporting the cycling of storage. Gilmore Reb., Nicor Ex. 4.0, 6:121. In particular, Nicor Gas made loans to marketers that regularly sold gas service to many of Nicor Gas' transportation customers. *Id.* at 6:128-130. Because Nicor Gas' tariffs allowed flexibility regarding the timing of withdrawals and injections, marketers had the discretion to satisfy customer requirements by flowing gas supply to Nicor Gas from interstate pipelines, which impeded the Company's storage cycling efforts. *Id.* at 7:134-140. Nicor Gas entered into Hub loans to facilitate storage cycling and to alleviate the constraints resulting from marketer activities; Hub loans served to provide a source of supply to marketers, displacing their choice to flow gas to Nicor Gas from the interstate pipelines and increasing the level of storage withdrawals. *Id.* at 7:143-146. Hub-related storage capacity, including the amount available for loans, is a subset of the level of capacity allocated to the Company's transportation customers. Sherwood Sur., Nicor Ex. 6.0R, 6:110-114.

III. Legal Standard

A. The Commission's PGA Rule

Part 525 of the Commission's Rules governs PGA clauses. Section 525.40(d) states, in pertinent part, as follows:

> Taking into account the level of additional recoverable gas costs that must be incurred to engage in a given transaction, the utility shall refrain from entering into any such transaction that would raise the Gas Charge(s).

83 Ill. Adm. Code § 525.40(d).

B. The Commission's Prudence Standard

The Commission initiated this proceeding pursuant to Section 9-220 of the Public Utilities Act (the "Act"). Init. Order at 1-2, quoting 220 ILCS 5/9-220. Section 9-220 provides that the Commission "may authorize the increase or decrease of rates and charges based upon changes in the cost of fuel used in the generation or production of electric power, changes in the cost of purchased power, or changes in the cost of purchased gas through the application of fuel adjustment clauses or purchased gas adjustment clauses." 220 ILCS 5/9-220(a). Section 9-220 further provides that the Commission shall initiate public hearings "to determine whether the clauses reflect actual costs of fuel, gas, power, or coal transportation purchased to determine whether such purchases were prudent, and to reconcile any amounts collected with the actual costs of fuel, power, gas, or coal transportation prudently purchased." *Id*.

The Commission has a well-established articulation of the standard by which utility prudence is reviewed under Section 9-220:

> Prudence is that standard of care which a reasonable person would be expected to exercise under the circumstances encountered by utility management at the time decisions had to be made. In determining whether or not a judgment was prudently made, only those facts available at the time judgment was exercised can be considered. Hindsight review is impermissible.
>
> Imprudence cannot be sustained by substituting one's judgment for that of another. The prudence standard recognizes that reasonable persons can have honest differences of opinion without one or the other necessarily being "imprudent".

In re: Commonwealth Edison Company, Docket No. 84-0395, Order at 17 (October 7, 1987).

Illinois courts have affirmed the Commission's articulation of the prudence standard:

> The standard under which the Commission assesses the prudence of a utility's gas purchases, pursuant to section 9-220 of the Act, is as follows: "Prudence is that standard of care which a reasonable person would be expected to exercise under the same circumstances encountered by utility management at the time decisions had to be made."

Illinois Power Co. v. Illinois Commerce Comm'n, 339 Ill. App. 3d 425, 428 (5th Dist. 2003).

> When a court considers whether a judgment was prudently made, only those facts available at the time judgment was exercised can be considered. *Hindsight review is impermissible.*

Id. (emphasis added).

Staff and CUB agree that the Commission should apply the above-quoted prudence standard in reviewing Nicor Gas' gas supply purchasing activities in this proceeding. Staff witness Mark Maple quoted the same prudence standard and testified that it applies here. Maple Dir., Staff Ex. 2.0, 3:41-56. Further, Staff witness Dr. Rearden agreed that, under this prudence standard, the Commission cannot "substitute our judgment for the utilities" and that the Commission must analyze the circumstances encountered by utility management "at the time decisions had to be made without hindsight." Tr. 182:11-12, 183:10-18 (Rearden). Similarly, CUB witness Mr. Mierzwa agreed that "prudence ought to be judged by the knowledge known by Nicor's management at the time it took a decision" and that "there can be differences of opinion in what's prudent." Tr. 219:19-22, 220:4-8 (Mierzwa). Mr. Mierzwa also agreed that the test for prudence is not finding the optimal course of action "based on after-the-fact data." Tr. 220:9-12 (Mierzwa).

IV. Uncontested Issues

Nicor Gas witness Mr. Bob Buckles presented Nicor Gas' reconciliation of GSC revenues collected with its actual cost of gas distributed, to the extent that such costs are recoverable, as recorded on the books of the Company for the 12 months ending December 31, 2003. Buckles Dir., Nicor Ex. 2.0, 2:22-25; *see also* Buckles Supp. Dir., Nicor Ex. 3.0. In response to Mr. Buckles' testimony, Staff witness Ms. Mary Everson presented certain adjustments to the Commodity Reconciliation for the Factor A adjustments amortized as of

December 31, 2003. Everson Dir., Staff Ex. 1.0R, 2:31-32. In rebuttal testimony, Nicor Gas witness Mr. Buckles noted that in an effort to simplify the issues in the instant proceeding, the Company accepted Ms. Everson's adjustment in the amount of $50,351 to the CGC Factor A as included in the Company's 2003 PGA filings. Buckles Reb., Nicor Gas Ex. 5.0, 8:162-164. This adjustment to Factor A is reflected as a Factor O amount to be collected from customers. *Id.* at 8:164. Ms. Everson presented schedules reflecting this adjustment, as well as the adjustment proposed by Staff witness Dr. David Rearden. Staff Schs. 3.01-3.03. Because Nicor Gas disputes Dr. Rearden's proposed adjustment, as discussed in detail below, the Company removed Dr. Rearden's adjustment from Staff Schedules 3.01-3.03 and adopted the modified schedules as Nicor Gas Exhibit 9.1. Buckles Sur., Nicor Gas Ex. 9.0, 1:16-18; 1:20-2:25. Ms. Everson additionally presented a proposed adjustment to the annual interest amount in the commodity reconciliation; however, in rebuttal testimony, Staff withdrew this adjustment. Everson Reb., Staff Ex. 3.0, 3:48-51. The Commission should adopt Nicor Gas Exhibit 9.1 and adopt Staff's proposed adjustment in the amount of $50,351 to the CGC Factor A.

V. Argument

This proceeding pertains to Nicor Gas' reconciliation of GSC revenues collected with its actual cost of gas distributed as recorded on the books of the Company for the 12 months ending December 31, 2003. As prescribed by Section 9-220 of the Act and further reflected in the Commission's Initiating Order, the Commission will determine whether Nicor Gas' gas supply purchases in 2003 were prudent and "reconcile any amounts collected with the actual costs of … gas … prudently purchased." 220 ILCS 5/9-220; Init. Order at 1. Nicor Gas bears the burden of proof to establish the prudence of its gas supply purchases and costs. 220 ILCS 5/9-220; Init. Order at 1-2.

The evidence demonstrates that Nicor Gas met its burden and established that its 2003 gas supply purchases were prudent. Indeed, in the only piece of Staff direct testimony to address the prudence of the Company's 2003 activities, Staff witness Mr. Maple testified that he did not discover any imprudent purchases during the reconciliation period and that he "found no reason to dispute the Company's assertion that all gas supply purchases were prudently incurred during the reconciliation period." Maple Dir., Staff Ex. 2.0, 3:36-40. Meanwhile, CUB witness Mr. Mierzwa argued that a single aspect of the Company's gas supply activities in 2003 – Hub loans – resulted in imprudent costs that the Commission should disallow. Then, for the first time in rebuttal testimony, Staff witness Dr. Rearden also raised a claim concerning Hub loans. Importantly, Staff never offered any explanation for the inconsistency in the positions of Mr. Maple and Dr. Rearden, nor did Staff ever identify any fact that changed from 2003 to the time of evidentiary hearings that led to a change in Staff's position.

The claims of Dr. Rearden and Mr. Mierzwa are based upon the mistaken belief that the Hub loans precluded Nicor Gas from withdrawing gas from storage inventory to serve sales customers and, instead, forced Nicor Gas to rely on purchases of expensive spot market gas, thereby raising the costs to Nicor Gas' sales, or PGA, customers. Rearden Reb., Staff Ex. 4.0, 18:378-383; Mierzwa Dir., CUB Ex. 1.0, 5:100-107. Although based upon the same flawed theory, Staff and CUB calculated their proposed disallowances differently. Staff proposed a disallowance of $18,526,379 comprised of two subparts: (1) a reduction in the amount of recoverable gas costs by the amount of non-PGA Hub revenues that allegedly should have been used to offset PGA gas costs, calculated at $8,209,614; and (2) a disallowance for the increased gas costs allegedly caused by the Hub loan activity, less the Hub revenues, calculated at $10,316,765. Rearden Reb., Staff Ex. 4.0, 11:224-228. CUB proposed a disallowance of

$22,232,739 for the allegedly “adverse impact” that the Hub loans had on the costs of PGA customers. Mierzwa Dir., CUB Ex. 1.0, 4:50-53; CUB Ex. 1.1.

The Commission should reject Staff’s and CUB’s claims here because they wholly lack merit. Hub loans do not increase PGA customers’ gas costs, nor do such loans impact the amount of gas available to such customers. In fact, the Commission already has rejected an almost identical claim by Mr. Mierzwa in the GCPP Order. Mr. Mierzwa argued there that Nicor Gas improperly “provided Hub services by withdrawing sales customers’ gas from storage and loaning it to third-parties, the affect of which was to increase the gas costs of sales customers.” GCPP Order at 9. The Commission rejected Mr. Mierzwa’s claims in the GCPP proceeding that the Company improperly manipulated its storage inventory, including by providing Hub services, concluding that “no definitive evidence was presented to show that this component of the GCPP was not operated as intended.” GCPP Order at 16-17. Mr. Mierzwa also failed to present definitive evidence in this proceeding. Indeed, his direct testimony here is nothing more than a reprise of his failed position in the GCPP proceeding. *Cf.* Mierzwa Dir., CUB Ex. 1.0, 3:49-67, 4:77-6:127 with Mierzwa Reb., CUB Ex. 2.0 Rev., 42:944-45:1007 in Docket Nos. 01-0705, 02-0067, and 02-0725 (consol.).

The facts demonstrate that the claims of Dr. Rearden and Mr. Mierzwa are founded upon assumptions that are neither correct nor reasonable. Furthermore, these witnesses’ testimonies reflect a fundamental lack of understanding of the basic components of Nicor Gas’ gas supply activities. This is, perhaps, not surprising given that neither Dr. Rearden nor Mr. Mierzwa has any experience or expertise in the highly complicated business of operating gas storage facilities – an activity which, if not operated properly, can damage or destroy a valuable storage asset that provides known and measurable benefits to customers. Tr. 163:1-165:1, 169:17-170:2

(Rearden); Tr. 208:13-210:20 (Mierzwa). This lack of expertise also is in sharp contrast to Mr. Maple, a Senior Gas Engineer with Staff, who found Nicor Gas' practices during the reconciliation period to be prudent. Maple Dir., Staff Ex. 2.0, 1:5-7, 2:31-3:56. Finally, Dr. Rearden and Mr. Mierzwa ignored the numerous facts relevant to the Company's Hub loans, including: (i) the operational benefits of the loans regarding storage cycling and reliability; (ii) the processes Nicor Gas personnel used to determine how much storage capacity to allocate to the Hub; (iii) Nicor Gas' consideration of the cost impact of Hub loans on PGA gas costs and the benefits that accrued to the Company's sales customers from the loans; (iv) Nicor Gas' internal review processes; and (v) Nicor Gas' tariffs in effect at the time, which provided, among other things, that Nicor Gas could interrupt Hub services if needed for firm sales customers.

As set forth below, the record contains substantial and compelling evidence demonstrating that these facts influenced the Company's use of Hub loans as a component of its gas supply activities in 2003. Accordingly, the disallowances proposed by Dr. Rearden and Mr. Mierzwa are contrary to the applicable law and the facts of the real world operating environment in which Nicor Gas made the Hub loans at issue.

A. Nicor Gas' use of the Hub and the Company's treatment of net revenues were in conformance with Nicor Gas' tariffs and Commission Orders in force in 2003.

It is undisputed that in 2003 Nicor Gas' Hub services were subject to Commission and FERC regulation. Specifically, intrastate Hub services were provided pursuant to Nicor Gas' Commission-approved Rate 21, and the Hub also provided FERC-jurisdictional, interstate storage and transportation services as a Hinshaw pipeline. Gulick Sur., Nicor Gas Ex. 7.0R, 27:496-498. Dr. Rearden and Mr. Mierzwa agreed that Nicor Gas' Hub services were provided pursuant to FERC and Commission filed tariffs. Tr. 195:12-196:21 (Rearden); Tr. 216:15-

217:2 (Mierzwa). Dr. Rearden and Mr. Mierzwa also agreed that those tariffs specified the terms and conditions under which the Hub services could be offered, as well as the types of various Hub services. Tr. 196:4-7 (Rearden); Tr. 217:3-6 (Mierzwa). Importantly, neither Dr. Rearden nor Mr. Mierzwa claim that Nicor Gas violated its Hub services tariffs in 2003. Tr. 199:8-12 (Rearden); Tr. 217:13-20 (Mierzwa).

Nicor Gas' Hub services also were operated and accounted for in accordance with two Commission Orders that were applicable in 2003, and which were entered in 1996. First, the Commission expressly required Nicor Gas to record its Hub revenues "above-the-line." *In re Northern Illinois Gas Company*, Docket No. 93-0320, Order at 6 (March 13, 1996). Thus, the Commission did not instruct Nicor Gas to reflect Hub revenues as an offset to PGA costs. Similarly, in a subsequent 1996 rate case Order, the Commission credited Nicor Gas' Hub revenues against the revenue requirement, referencing its prior decision from that year in Docket No. 93-0320. *In re Northern Illinois Gas Company*, Docket No. 95-0219, Order at 14-15 (April 3, 1996). In a separate section of the 1996 rate case Order, under the heading "Revenue Items Not Included," Nicor Gas was directed to credit off-system storage revenues to the PGA. *Id*. at 17. Again, the Commission did not authorize or require Nicor Gas to reflect Hub revenues as an offset to PGA costs. In short, the Commission's 1996 Orders recognized that PGA and non-PGA Hub activities were distinguishable and directed that they be credited differently.

The Commission's direction concerning the treatment of Hub revenues, as reflected in these 1996 Orders, remained in effect in 2003 and the Commission should rely upon them in assessing whether Hub revenues were accounted for properly in this reconciliation proceeding for 2003. Put simply, the Commission should apply the rules that were in place during the 2003 reconciliation period. The facts demonstrate that, in 2003, Nicor Gas recorded its Hub revenues in compliance with the then-applicable Commission Orders. Gulick Sur., Nicor Gas Ex. 7.0R, 7:150-152. As further discussed below, Staff's argument for allocating the Hub revenues to the PGA should be rejected because that argument is contrary to the Commission's Orders in force in 2003 and is premised on the application of pure hindsight, based on Commission Orders not in force until well after 2003.

B. Nicor Gas had a legitimate operational reason to use the Hub services to assist in the management of its on-system storage facilities.

The Commission's examination of the prudence of Nicor Gas' gas costs should account for the fundamentals of how Nicor Gas plans for and operates its gas supply activities, including how the Company manages its on-system storage. Only by operating and maintaining its system does Nicor Gas ensure firm deliverability and reliability for the Company and its sales, transportation, and Customer Select customers.

Importantly, the testimonies of Dr. Rearden and Mr. Mierzwa in this proceeding reflect a fundamental lack of understanding of Nicor Gas' operations, which resulted in their flawed analyses as discussed further below. For example, Mr. Mierzwa's proposed disallowance assumed that, in the fall of 2002, the Company should have known what the cost of gas would be in the summer of 2003 and failed to take into account the activities the Company needed to engage in to properly manage its storage assets. Mierzwa Reb., CUB Ex. 2.0, 2:28-3:6. Likewise, Dr. Rearden admitted that he did not understand the Company's operations: "I do not understand why Nicor was unable to reduce purchases of flowing gas to accommodate increased withdrawals of stored gas." Rearden Reb., Staff Ex. 4.0, 8:168-170. Dr. Rearden apparently did not feel the need to understand the Company's operations because he admitted that his disallowance did not include any operational considerations, such as operational behavior driven by demand, anticipated future peaks, or the need to cycle the storage. Tr. 193:14-15 (Rearden).

In response to the misconceptions of Dr. Rearden and Mr. Mierzwa, Nicor Gas witness Timothy Sherwood explained the physical characteristics of the Company's storage operations and the planning that Nicor Gas must undertake to properly maintain those operations.[2] Mr. Sherwood began by explaining that Nicor Gas operates eight aquifer storage fields that account for over 149 Bcf of on-system storage inventory. Sherwood Sur., Nicor Gas Ex. 6.0R, 19:370-371. He testified that Nicor Gas' aquifer storage fields have unique physical characteristics mandating that the gas inventory be regularly withdrawn and refilled, or cycled, in order to maintain optimal field performance. Sherwood Sur., Nicor Gas Ex. 6.0R, 19:389-391. Even though they demonstrated a lack of understanding of Nicor Gas' operations, both Dr. Rearden and Mr. Mierzwa agreed that proper cycling of the aquifer storage fields supports the vitality and longevity of the fields. Tr. 169:6-170:2 (Rearden); Tr. 210:16-20 (Mierzwa). More critically, Dr. Rearden and Mr. Mierzwa agreed that the storage fields can be damaged or deteriorated without proper cycling. *Id.*

Mr. Sherwood further testified that Nicor Gas must plan for and identify required inventory and pressure targets by way of injection and withdrawal activity for each aquifer field for each day, month, and season. Sherwood Sur., Nicor Gas Ex. 6.0R, 20:395-399. Without such planning, actual storage injection and withdrawal activity could have a detrimental effect on how the Company's storage fields will perform in the short-term and the long-term. *Id.* at 20:397-399. For example, Mr. Sherwood explained that the Company's failure to reach the required inventory level at the start of each winter season would result in reduced daily and seasonal withdrawal deliverability. *Id.* at 20:399-400. Similarly, the Company's failure to sufficiently empty each aquifer field by the end of the withdrawal season may result in reduced

[2] In contrast to Dr. Rearden and Mr. Mierzwa, Mr. Sherwood has extensive operational experience in managing the gas supply operations of an LDC, including the management of storage assets. Sherwood Sur., Nicor Gas Ex. 6.0R, 1:7-2:22 and Nicor Gas Ex. 6.1.

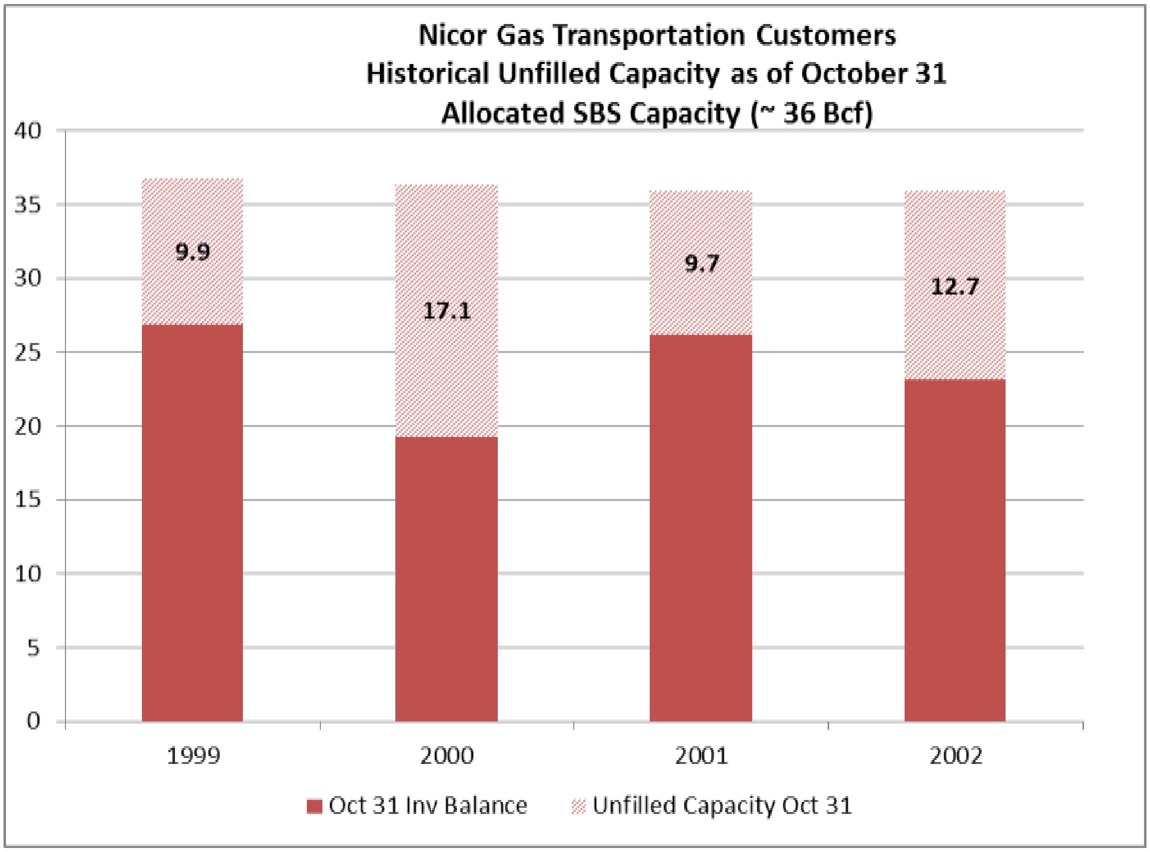
daily withdrawal deliverability of the fields in addition to risking a portion of working gas inventory in future winters. *Id*. at 20:401-403.

To address these operational considerations and meet the peak day and seasonal supply and deliverability needs of the Company's sales, transportation, and Customer Select customers, Nicor Gas establishes a winter season supply plan in the fall, well before the beginning of the winter season. Sherwood Sur., Nicor Gas Ex. 6.0R, 21:432-433. For the 2003 reconciliation year, the evidence shows that Nicor Gas established its supply plans months prior to the 2002-2003 winter season. *Id*. at 21:433-434.

One of the ways in which Nicor Gas manages its storage resources as part of its planning process each year is to review the expected use of those resources by the Company's transportation customers to determine if a portion of their capacity reasonably can be allocated to provide Hub services on an interruptible basis. Sherwood Sur., Nicor Gas Ex. 6.0R, 22:440-441. Historically, many of the Company's transportation customers have not used their full storage rights on a regular basis, resulting in available capacity to provide Hub services. *Id*. at 22:438-440. The purpose behind allocating a portion of transportation customers' storage capacity to the Hub is to address the operational needs of the Company's on-system storage. *Id*. at 11:193-195.

Although transportation customers were allocated storage inventory capacity, they were not required to fill the storage prior to the start of winter. *Id*. at 12:221-223. Mr. Sherwood testified that, in planning for the 2003 reconciliation year, Nicor Gas evaluated transportation customer activity over the prior periods, as set forth in Figure 3 below, and made a reasonable and prudent estimate of the inventory space that transportation customers were likely to leave unfilled going into the winter of 2002-2003. *Id*. at 12:224-227, 22:452-23:459.

Figure 3:

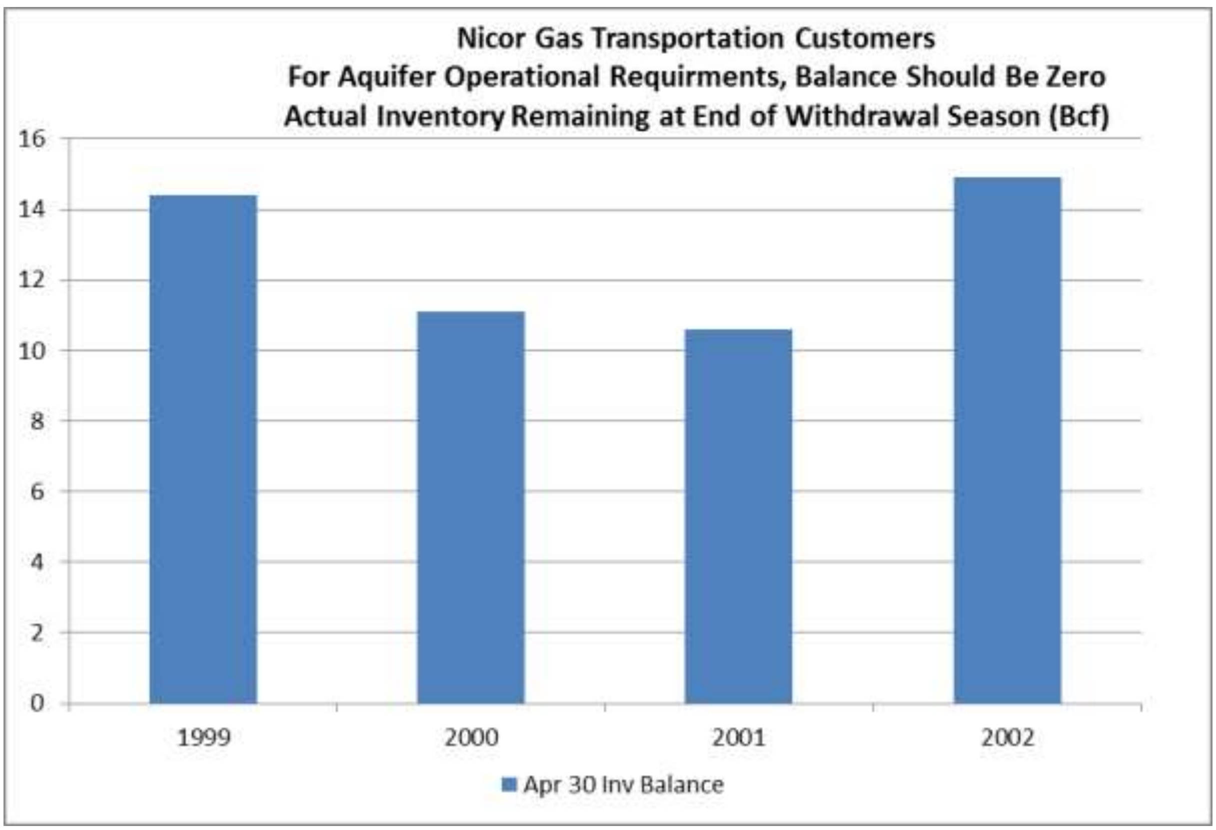


Id. at 23:460-461.

Well prior to the start of the winter, Nicor Gas offered Hub park service to the marketplace to aid in filling storage prior to winter. *Id*. at 12:227-229, 22:457-23:459. The park service allows parties to inject gas prior to the start of the winter and requires those parties to withdraw that gas prior to end of the winter in order to allow cycling of the fields. *Id*. at 12:229-231. Most of the withdrawals that occurred in March 2003 were associated with parties "unparking" gas that they had injected prior to the start of the winter into space left empty by transportation customers. *Id*. at 12:231-233. The "parked" gas was not purchased for sales customers, paid for by sales customers, nor did sales customers need to replace the "unparked" gas. *Id*. at 12:233-235.

Mr. Sherwood also presented data, summarized in Figure 4 below, showing that the historical level of storage gas left uncycled by transportation customers as of April 30th for the several years leading up to the winter of 2002-2003 ranged between 10.6 Bcf and 14.9 Bcf. Sherwood Sur., Nicor Gas Ex. 6.0R, 23:464-465. In planning for the 2003 reconciliation year, Nicor Gas personnel used the information reflected in Figure 4 to determine the prudent and reasonable level of Hub loans it could offer to the marketplace as a tool in fully cycling storage prior to the end of winter, assuming normal weather. *Id*. at 23:467 – 24:470.

Figure 4:



Id. at 24:475-476.

Nicor Gas witness Christopher Gulick also testified that the Hub services at issue in this proceeding were useful tools for managing Nicor Gas' physical storage inventories and protecting the operating reliability of the aquifer storage fields.[3] Gulick Sur., Nicor Gas Ex. 7.0R, 3:69-70. Mr. Gulick further testified that Nicor Gas' use of Hub services was completely consistent with industry practice. As Mr. Gulick explained, operators routinely employ mechanisms such as operational balancing agreements, interconnection agreements, park-and-loan services, and other load balancing services that help maintain the operational integrity of their systems, while meeting the needs of customers. *Id*. at 20:404-407; Tr. 115:16-116:1 (Gulick). He further explained that balancing services, like Hub services, typically have a lower level of priority than firm services, allowing the pipeline to suspend balancing services during defined periods to maintain operational integrity and meet contractual commitments. *Id*. at 20:407-409.

C. Hub loans did not affect Nicor Gas' ability to withdraw gas for the Company's PGA customers because the load served by Hub withdrawals was not associated with PGA customers' demand.

Staff's and CUB's proposed disallowances are premised upon the mistaken assumption that the gas Nicor Gas withdrew from storage for the Hub loans was gas available to serve the Company's PGA customers. Rearden Reb., Staff Ex. 4.0, 18:380-383; Mierzwa Dir., CUB Ex. 1.0, 5:100-107. The evidence demonstrates that Nicor Gas' provision of Hub services did not impact the storage capacity or deliverability available to the Company's PGA customers.

Specifically, review of the Company's contemporaneous documentation shows that the Hub loans were accounted for with third party gas inventories. Gulick Sur., Nicor Gas Ex. 7.0R, 7:153-155. Mr. Gulick reviewed the Company's Aquifer Reports from 2003, which are the monthly summaries used by Nicor Gas to track inventory positions in its owned and leased storage fields, and concluded that the Aquifer Reports show that Nicor Gas included the

[3] Unlike Dr. Rearden and Mr. Mierzwa, Mr. Gulick also has experience in managing gas supply operations for an LDC. Gulick Sur., Nicor Gas Ex. 7.0R, 1:13-2:29 and Nicor Gas Ex. 7.1.

accounting for the Hub activity within the accounting for other third party gas inventories. *Id*. at 7, fn. 9. Mr. Gulick then prepared a table summarizing the pertinent data from the Company's Aquifer Reports. *Id*. at 20:413-418 and Table 2. Lines 2-9 of Mr. Gulick's Table 2 below show the third party gas inventories, and lines 11-13 recombine the data from the previous lines to show the Hub and non-Hub gas inventories. *Id*. at 21:419-420. Table 2 clearly illustrates that the Hub loans reduce the physical amount of third party gas, not PGA gas, held in the Company's inventory.

Table 2

Nicor Gas Company
2003 Storage Month-End Activity
for Third-Party Gas (MMBtu)

Line No.		January	Net Inj/(Wdr)	February	Net Inj/(Wdr)	March
1	**Per Aquifer Report**					
2	Transportation Gas	12,313,977	(7,000,768)	5,313,209	5,778,757	11,091,966
3	Customer Select	4,546,875	(2,555,889)	1,990,986	(1,811,453)	179,533
4	Hub Gas	3,730,430	(7,640,532)	(3,910,102)	(4,038,948)	(7,949,050)
5	VA Power Troy Grove	4,000,000	(2,417,436)	1,582,564	(1,582,396)	168
6	EKT Prefill 2001	6,734,026	-	6,734,026	-	6,734,026
7	Oxy Prefill	5,059,732	-	5,059,732	-	5,059,732
8	BP Amoco - Company Use	278,913	(233,908)	45,005	361,044	406,049
9	Total Third-Party Gas	36,663,953	(19,848,533)	16,815,420	(1,292,996)	15,522,424
10						
11	Non-Hub Gas	32,933,523	(12,208,001)	20,725,522	2,745,952	23,471,474
12	Hub Gas	3,730,430	(7,640,532)	(3,910,102)	(4,038,948)	(7,949,050)
13	Total Third-Party Gas	36,663,953	(19,848,533)	16,815,420	(1,292,996)	15,522,424

Gulick Sur., Nicor Gas Ex. 7.0R, 21:419-420.

Mr. Gulick also prepared a table with data from the Company's Aquifer Reports illustrating that, Nicor Gas does not, as posited by Dr. Rearden, borrow gas from its PGA inventories to allocate storage capacity and inventory to the Hub. *Id*. at 21:425-426 and Table 3. Mr. Gulick's Table 3 below compares actual inventories to inventories assuming no Hub loan activity in the 2003 reconciliation period (line 23). *Id*. at 21:426-428 and Table 3. If there had been no Hub loan activity in 2003, the lack of Hub activity would have increased the total gas in inventory (line 16) by an equal amount, resulting in no difference to Nicor Gas-owned inventory (line 29).

Table 3

Table 3 - Revised

Nicor Gas Company
2003 Month-End Storage Positions (MMBtu)

Line No.		January	February	March
1	**Per Aquifer Report**			
2	Gas in Aquifer Storage	70,059,242	42,879,803	31,654,623
3	Gas in Leased Storage	5,661,014	389,369	3,292,902
4	Reverse Parking	844,289	-	-
5	Sub-total	76,564,545	43,269,172	34,947,525
6				
7	Less: Third Party Gas			
8	Non-Hub Gas	32,933,523	20,725,522	23,471,474
9	Hub Gas	3,730,430	(3,910,102)	(7,949,050)
10	Sub-total	36,663,953	16,815,420	15,522,424
11				
12	Plus: Line Pack	549,673	549,673	549,673
13	Total Nicor PGA Gas	40,450,265	27,003,425	19,974,774
14				
15	**Assume No Hub Activity**			
16	Gas in Aquifer Storage	76,262,376	56,723,469	49,537,237
17	Gas in Leased Storage	5,661,014	389,369	3,292,902
18	Reverse Parking	844,289	-	-
19	Sub-total	82,767,679	57,112,838	52,830,139
20				
21	Less: Third Party Gas			
22	Non-Hub Gas	32,933,523	20,725,522	23,471,474
23	Hub Gas	9,933,564	9,933,564	9,933,564
24	Sub-total	42,867,087	30,659,086	33,405,038
25				
26	Plus: Line Pack	549,673	549,673	549,673
27	Total Nicor PGA Gas	40,450,265	27,003,425	19,974,774
28				
29	Change in Nicor PGA Gas	-	-	-

Sources: Aquifer Reports and Sherwood testimony (Nicor Gas Ex. 6.0, Figure 2)

Gulick Sur., Nicor Gas Ex. 7.0R, 22:431-432.

As shown in Table 3 above, Nicor Gas did not use PGA gas in storage to support the Hub loans. Instead, the table shows that the physical Hub inventory accounts are tracked with the other third party gas accounts, and that changes in the Hub inventory levels do not affect the quantity of PGA gas owned by Nicor Gas.

While Mr. Mierzwa focused on the negative status of the Hub loans in February and March of 2003 as shown in line 9 of Table 3, line 10 of Table 3 demonstrates that the total amount of third party gas in Nicor Gas' storage fields in March 2003 was a positive 15.5 Bcf. Tr. 124:1-7 (Gulick). As Mr. Gulick explained, it is significant that the overall total of third party gas in Nicor Gas' storage fields was a positive figure:

> … I think this is a good illustration about how the Hub loans are a good tool to try to pull gas out of storage that needs to be taken out. If you look at that – what that says on a net basis, there's 15.5 bcf of gas left in the storage fields at end of March when a deeper cycling is probably more desirable and if you can also look at that top line on Line 8, you could see that between February and March, third party gas inventories actually increased. So during a period with very cold temperatures in the early part of the month, the customers are, in fact – the transport customers are injecting gas into storage when operationally Nicor needed to get gas out of storage and so there's … a negative 8 bcf indicates the Hub loans and unparks that are necessary to, in fact, try to get the inventories in a deep enough cycle.

Tr. 152:16-153:10 (Gulick).

Nicor Gas presented still more data demonstrating that Nicor Gas' PGA inventory is not affected by the Hub loans in the form of a schedule for the reconciliation period of Company-owned gas and gas belonging to third parties. Nicor Gas Ex. 7.7. Mr. Gulick relied upon this data to prepare a table showing that Nicor Gas' calculation of its inventories is not dependent on Hub loans. Gulick Sur., Nicor Gas Ex. 7.0R, 23:440-442 and Table 4. Hub loans do not appear on the Company's schedule or Table 4 below because they are not associated with any particular party. *Id*. at 23:442-444. It should be noted that the ending balance for Nicor Gas-owned gas shown in Table 4, column G, is the same value as reflected in Table 3 above on line 13. Similarly, the ending balances for Customer-owned gas shown in Table 4, column F, equal the values reflected in line 10 of Table 3 above. In short, Tables 3 and 4 demonstrate that Nicor Gas' provision of Hub loans did not affect the accounting for the quantity of Nicor Gas-owned gas in storage. *Id*. at 23:447-448. Importantly, Mr. Mierzwa testified that he had no reason to doubt that Table 4 represents a correct summary of the Company's storage inventories for the reflected months of 2003. Tr. 235:2-5 (Mierzwa).

Table 4

Summary of Nicor Gas Company Inventory Balances
January - May 2003 (All values in MMBtu)

		A	B	C	D	E=A+B+C+D	F	G=E-F
		Physical Storage						
Line No.		Aquifer	Leased	Reverse Parking	Line Pack	Sub-total: Net Top Gas	Less: Third Party Gas	Equals: Nicor PGA Gas
1	January							
2	Starting Balance	105,236,954	12,316,777	-	549,673	118,103,404	53,962,106	64,141,298
3	Add: Injections	119,522	171,930	844,447	-	1,135,899	48,750	1,087,149
4	Less: Withdrawals	(35,297,234)	(6,827,693)	(158)	-	(42,125,085)	(17,346,903)	(24,778,182)
5	Ending Balance	70,059,242	5,661,014	844,289	549,673	77,114,218	36,663,953	40,450,265
6								
7	February							
8	Starting Balance	70,059,242	5,661,014	844,289	549,673	77,114,218	36,663,953	40,450,265
9	Add: Injections	15	58,514	158	-	58,687	-	58,687
10	Less: Withdrawals	(27,179,454)	(5,330,159)	(844,447)	-	(33,354,060)	(19,848,533)	(13,505,527)
11	Ending Balance	42,879,803	389,369	-	549,673	43,818,845	16,815,420	27,003,425
12								
13	March							
14	Starting Balance	42,879,803	389,369	-	549,673	43,818,845	16,815,420	27,003,425
15	Add: Injections	3,802,694	3,232,166	-	-	7,034,860	6,139,801	895,059
16	Less: Withdrawals	(15,027,874)	(328,633)	-	-	(15,356,507)	(7,432,797)	(7,923,710)
17	Ending Balance	31,654,623	3,292,902	-	549,673	35,497,198	15,522,424	19,974,774
18								
19	April							
20	Starting Balance	31,654,623	3,292,902	-	549,673	35,497,198	15,522,424	19,974,774
21	Add: Injections	9,716,458	7,138,840	165,596	-	17,020,894	2,691,176	14,329,718
22	Less: Withdrawals	(4,520,029)	(1,386,688)	(165,596)	-	(6,072,313)	(1,805)	(6,070,508)
23	Ending Balance	36,851,052	9,045,054	-	549,673	46,445,779	18,211,795	28,233,984
24								
25	May							
26	Starting Balance	36,851,052	9,045,054	-	549,673	46,445,779	18,211,795	28,233,984
27	Add: Injections	17,011,602	4,915,004	-	-	21,926,606	5,687,658	16,238,948
28	Less: Withdrawals	(443,831)	(88,046)	-	-	(531,877)	-	(531,877)
29	Ending Balance	53,418,823	13,872,012	-	549,673	67,840,508	23,899,453	43,941,055

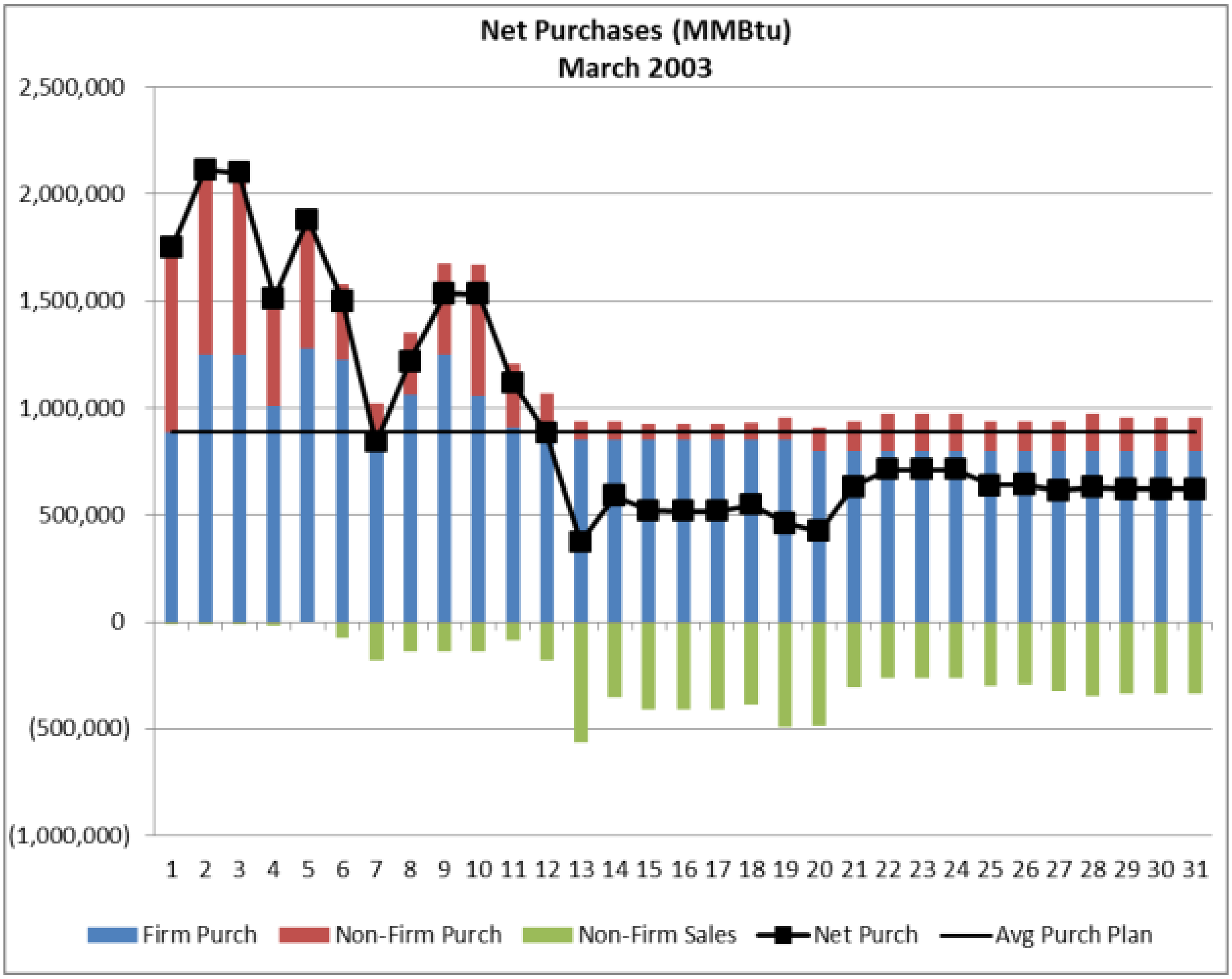
Source: Data taken from NICOR 002671; GS-15 Exhibit A, page 2 of 2

Gulick Sur., Nicor Gas Ex. 7.0R, 24:449-450.

Mr. Mierzwa admitted during the course of this proceeding that he did not even examine whether the Hub loans actually reduced the amount of gas for PGA customers. Specifically, Mr. Mierzwa stated that he "prepared no analyses or workpapers to reach the conclusion that Hub services reduced the storage gas available to PGA customers because no analysis or workpapers were necessary." Nicor Gas Ex. 7.5 at NG CUB 3.03(a). Mr. Mierzwa's admission demonstrates that he does not understand the difference between storage inventory and storage deliverability. While inventory levels do influence deliverability, a change in storage inventory does not necessarily result in a corresponding change in deliverability. Gulick Sur., Nicor Gas Ex. 7.0R, 15:304-306. Therefore, a lower overall aquifer inventory level does not result in a one-for-one reduction in the ability to withdraw gas from the storage fields. Criticism of Nicor Gas for not withdrawing more storage gas for the PGA customers is unwarranted because the Hub loans did not reduce the PGA storage inventory. Instead, as Mr. Gulick explained, Nicor Gas more plausibly did not withdraw more storage gas to serve the demand of PGA customers because it had already committed to a planned dispatch, which likely included set quantities of firm pipeline purchases, or because there was insufficient PGA demand. *Id*. at 15:310-313.

In fact, Nicor Gas' inability to withdraw more storage gas to serve PGA customers was driven by warmer weather in the latter half of March 2003 that decreased those customers' demand well below the levels experienced with typical March temperatures. Sherwood Sur., Nicor Gas Ex. 6.0R, 5:92-94. Therefore, given the significantly reduced demand of sales customers and the reduced level of flowing gas purchases required to serve areas of the Nicor Gas system that cannot be served by on-system storage withdrawals, the Company could not utilize additional on-system storage withdrawals to meet sales customer demand during that period. *Id*. at 5:95-99. In order to meet the critical operational need to cycle on-system storage inventory, the Company also dramatically curtailed its purchases of flowing gas in March 2003 as compared to its original plans. *Id*. at 5:99-101. As reflected in Figure 1 below, this dramatic reduction in planned purchases was accomplished by cutting gas daily purchases, including reducing such purchases to zero for several days, and selling off flowing gas purchases in the open market. *Id*. at 5:101-104. This allowed the Company to withdraw on-system storage inventory pursuant to its withdrawal plan, thus cycling the inventory, while managing a significant reduction in sales customer demand. *Id*. at 5:104-106.

Figure 1:



Sherwood Sur., Nicor Gas Ex. 6.0R, 6:107-108.

D. Nicor Gas' Hub-related activities did not increase the cost of gas charged to the Company's PGA customers.

Dr. Rearden's and Mr. Mierzwa's proposed disallowances assume that the Company's provision of Hub services increased costs to PGA customers. Rearden Reb., Staff Ex. 4.0, 3:45-46; Mierzwa Dir., CUB Ex. 1.0, 4:94-97. Specifically, both witnesses assumed that the "cost" of the Hub loans was the price paid by Nicor Gas for flowing gas in the timeframe in which the Hub loans were made. Rearden Reb., Staff Ex. 4.0, 18:378-391; Mierzwa Dir., CUB Ex. 1.0, 4:98-5:107. Dr. Rearden further challenged Nicor Gas for treating the Hub loans as "costless." Rearden Reb., Staff Ex. 4.0, 17:374. These claims are wrong and should be rejected.

Contrary to their unsupported assumptions, the evidence demonstrates that none of the Company's third party storage activity, including the Hub loans, affects the cost of the gas that Nicor Gas stored for potential sale to its PGA customers. First and foremost, the evidence demonstrates that there are no costs to sales customers associated with Hub activity because the gas for the Hub activity is taken out of storage inventory that is not even available to those customers. Tr. 61:11-14 (Sherwood). The amount of Hub-related storage capacity is a subset of the level of capacity allocated to transportation customers pursuant to tariff. Sherwood Sur., Nicor Gas Ex. 6.0R, 6:112-114. As Mr. Sherwood testified, "there are no particular detriments or costs put onto the sales customers associated with providing Hub loan services given that that service is provided of unutilized storage capacity allocated to transportation customers and not available to sales customers." Tr. 97:10-15 (Sherwood).

The evidence demonstrates that Nicor Gas had determined that Hub loans could be made at no incremental cost to PGA customers. *See, e.g.*, Nicor Gas Ex. 7.3 at NICOR 005188-5189, NICOR 005170-5185, NICOR 005186-5187. In fact, contemporaneous with the loans, Nicor Gas personnel explicitly considered the cost of the Hub loans and concluded that the "cycling of loaned gas had no adverse impacts on the GSC." Nicor Gas Ex. 7.3 at NICOR 005188. Nicor Gas personnel also concluded that the Hub loans provided benefits to the Company's PGA customers. Nicor Gas Ex. 7.3 at NICOR 005170-5185. Based upon the evidence showing that the Hub loans did not affect the quantity or cost of storage inventories for PGA customers, Mr.

Gulick testified that Nicor Gas plainly had a rational basis for its understanding that Hub loans were essentially costless to the PGA customers and, in fact, provided a benefit. Gulick Sur., Nicor Gas Ex. 7.0R, 26:479-481.

In addition, the evidence demonstrates that the cost of gas stored by Nicor Gas for potential sale to its PGA customers in 2003 was based on the Company's total firm and spot gas purchases in 2003, including fixed and variable gas supply and transportation costs. *Id*. at 24:453-455. No storage activities, either injections or withdrawals, are included in this calculation. *Id*. at 24:455 – 25:456. Thus, Nicor Gas demonstrated that the cost of flowing gas purchased on days that Hub withdrawals (including loans) were made was not the appropriate cost basis for Hub loans as assumed by Staff and CUB.

Finally, the evidence demonstrates that Nicor Gas did not purchase gas to satisfy Hub services because such gas is procured by third-parties. Thus, the Company's PGA customers do not bear any commodity costs related to Hub activities. To the extent that Nicor Gas did incur costs related to the provision Hub services, the Company recovered such costs from Hub customers pursuant to charges set forth in the tariffs addressing Hub services approved by FERC and the Commission. Sherwood Sur., Nicor Gas Ex. 6.0R, 8:138-139. The charges for services offered under both the FERC-approved interstate Hub tariff and the Company's Commission-approved Rate 21 are cost-based, which means that the Company recovers its costs of providing Hub services pursuant to its tariffed charges. *Id*. at 8:139-140. None of those tariff charges applies to, or recovers money from, sales customers. *Id*. at 8:140-141. Thus, the costs associated with the provision of Hub services are not shifted to the Company's PGA customers. *Id*. at 8:145-150.

E. Nicor Gas' accounting treatment for the Hub loans further demonstrates that PGA inventories did not subsidize the loans.

In proposing their disallowances, Dr. Rearden and Mr. Mierzwa also entirely ignored the fact that the Company's operation of its storage fields and the Company's accounting for the gas in those storage fields are entirely separate and distinct matters. The evidence demonstrates that Nicor Gas' PGA gas inventories did not subsidize the cost of making the Hub loans; instead, the data contained in the Company's Aquifer Reports showed that Hub inventories were accounted for with third party inventories.

Nicor Gas' cost and volume accounting for its physical underground storage inventories is straightforward. In particular, quantities of natural gas injected into the storage fields are added to existing inventories and withdrawals are subtracted. Gulick Sur., Nicor Gas Ex. 7.0R, 17:359 – 18:360. For any given storage account, the costs associated with existing inventories, injections, and withdrawals also are recorded with the corresponding quantities of gas. *Id*. at 18:360-362. Nicor Gas uses LIFO accounting on a calendar year basis, so the actual cost of gas withdrawn from storage in February is not known until the end of the calendar year. *Id*. at 18, fn. 37.

Mr. Gulick explained this accounting process by way of an example. In that example, presented in Table 1 below, there are two accounts – one utility (the owner of the storage facility) that injects and withdraws gas, and one utility customer that borrows gas from the storage operator and then replaces it. *Id*. at 18:378 – 19:381. The example in Table 1 illustrates two important concepts. First, the quantity of gas in storage and the cost basis for the gas held in the utility account are not affected by the utility lending gas to the customer. *Id*. at 19:381-383. Second, the utility does not know the cost basis for the inventory position of the customer. *Id*. at 19:383-384.

Table 1

Illustrative Example of Physical versus Accounting Storage Positions
(Values as indicated)

Line No.		Month 1	Month 2	Month 3	Month 4
1	Utility Company				
2	Inventory (MMBtu)	1,000,000	1,500,000	1,750,000	1,000,000
3	Cost of Gas	$ 5,000,000	$ 8,000,000	$ 9,000,000	$ 5,142,857
4	Average Cost/MMBtu	$ 5.00	$ 5.33	$ 5.14	$ 5.14
5					
6	Utility Customer				
7	Inventory (MMBtu)	500,000	(500,000)	(250,000)	500,000
8	Cost of Gas				
9	Average Cost/MMBtu				
10					
11	<u>Physical vs. Accounting (MMBtu)</u>				
12	Physical Gas in Storage	1,500,000	1,000,000	1,500,000	1,500,000
13	Delivery Obligation[1]	1,500,000	1,500,000	1,750,000	1,500,000
14	Difference	-	(500,000)	(250,000)	-

1/ This is the utility's delivery obligation, and it applies to positive inventories, only.

Gulick Sur., Nicor Gas Ex. 7.0R, 19:385-386.

As it relates to this proceeding, the example in Table 1 above provides a simplified illustration of what happened when Nicor Gas loaned gas to the Hub. The inventory for the utility, or Nicor Gas, reflects its discrete injections and withdrawals, including tracking the average inventory costs (assuming average cost accounting). *Id*. at 19:389-391. The utility loans gas to the customer, which causes the inventory for the customer to be negative and reduces the physical quantity of gas in storage. *Id*. at 19:391-392. However, the utility's ability to withdraw gas to serve its customers does not change as a result. *Id*. at 19:392 – 20:393. Further, as long as the customer's inventory is negative, the utility has no obligation to deliver additional quantities of gas to the customer until the customer injects sufficient gas so that the customer's inventory becomes positive. *Id*. at 20:394-396. As can be seen in the example in Table 1, the difference in delivery obligation (shown on line 14) is equal to the quantity of gas loaned to the customer. *Id*. at 20:396-397.

Returning to the Hub loans at issue here, the evidence demonstrates that while the physical quantity of gas in Nicor Gas' storage fields changed as a result of making the Hub loans, the accounting for the amount of gas held by Nicor Gas' PGA and other storage customers did not. *Id*. at 20:398-400. The negative inventory shown on the Company's Aquifer Reports for the Hub indicated the amount of physical gas owed to Nicor Gas' storage fields, not to Nicor Gas' PGA account. *Id*. at 20:400-402.

F. Staff and CUB improperly use hindsight to review Nicor Gas' actions in the winter of 2002-2003.

The Commission's prudence standard mandates that, "[i]n determining whether or not a judgment was prudently made, *only those facts available at the time judgment was exercised can be considered*" and "[h]indsight review is impermissible." *In re: Commonwealth Edison Company*, Docket No. 84-0395, Order at 17 (October 7, 1987) (emphasis added). *See also Illinois Power Co. v. Illinois Commerce Comm'n*, 339 Ill. App. 3d 425, 428 (5th Dist. 2003).

Likewise, Section 525.40(d) of the Commission's rules provides, in relevant part:

> Taking into account the level of additional recoverable gas costs that must be incurred to engage in a given transaction, *the utility shall refrain from entering into any such transaction that would raise the Gas Charge(s).*

83 Ill. Adm. Code § 525.40(d) (emphasis added). The rule therefore governs a utility's actions leading up to the time in which it engages in a given transaction because a utility can only refrain from entering into a transaction that has not yet occurred.

When Section 525.40(d) is combined with the Commission's prudence standard, it is undisputed that review of the prudence of Nicor Gas' gas supply purchases must take into account both management judgment and the information that was available to Nicor Gas at the time it made its purchasing decisions. Dr. Rearden conceded that the Commission's prudence evaluation "should be based upon the circumstances encountered by utility management at the time decisions had to be made." Nicor Gas Ex. 7.2 at NG Staff 2.07(a). Further, at the evidentiary hearing, Dr. Rearden admitted that "retroactive ratemaking" is "not supposed to happen." Tr. 202:6-20 (Rearden). Mr. Mierzwa also admitted that the test for prudence is not finding the optimal course of action based on after-the-fact data. Tr. 220:9-12 (Mierzwa). Notwithstanding these admissions on the proper prudence standard to be applied here, both Dr. Rearden and Mr. Mierzwa support their proposed disallowances by relying entirely upon authority and/or facts only in existence well after the months in which Nicor Gas planned for its storage operations in 2002 and in which it allocated capacity for Hub services in the winter of 2002-2003.

In proposing his disallowance, Dr. Rearden argued that the Hub revenues should be allocated to offset gas costs in the PGA because "the only source of gas that Nicor has to support a negative balance [for Hub loans] is gas purchased through the PGA." Rearden Reb., Staff Ex. 4.0, 4:70-72. For support, Dr. Rearden pointed to the Commission's Order in Nicor Gas' 2004 rate case proceeding, Docket No. 04-0779. *Id*. at 3:64-4:68. According to Dr. Rearden, Staff supported a change in Nicor Gas' Hub revenue treatment in that rate case proceeding "because it was concerned that Nicor had an incentive to provide Hub services in a way that raised PGA gas costs." *Id*. at 11:236-239.

However, there is no basis, and Dr. Rearden offered none, to explain why a Commission decision entered in 2005 appropriately is used to assess the Company's activities in 2003, let alone assess the results of those activities. Dr. Rearden acknowledged that the Order in the rate case proceeding was not entered until September of 2005. Tr. 200:18-201:1 (Rearden). Dr. Rearden also acknowledged that he did not cite to any Commission Order issued prior to the 2005 rate case Order that directed Nicor Gas to change the treatment of Hub revenues from the manner approved by the Commission in two orders entered in 1996 governing Nicor Gas' treatment of Hub revenues (Docket Nos. 93-0320 and 95-0219). Tr. 201:18-21 (Rearden). Dr. Rearden admitted that it is prudent for utility management to obey Commission Orders that "apply to the activity in question at the time the activity occurs." Tr. 201:22-202:4 (Rearden).

Dr. Rearden also claimed that there was "precedent" for his disallowance in a 2006 Order in a PGA reconciliation involving The Peoples Gas Light and Coke Company's ("PGL"), Docket No. 01-0707. Rearden Reb., Staff Ex 4.0, 11:240-12:245, 15:313-315. Although the Commission initiated the PGL proceeding in 2001, the Commission did not enter its final Order there until 2006. *Illinois Commerce Comm'n v. Peoples Gas Light and Company*, Docket No. 01-0707, Order (March 28, 2006) ("PGL Order"). Therefore, Dr. Rearden again attempted to retroactively apply a post-2003 Commission decision concerning Hub revenues to Nicor Gas' 2003 activities. Dr. Rearden's reliance on the PGL Order also is problematic because the Commission's Final Order in the PGL proceeding was the product of an agreement to resolve issues between the parties. PGL Order at 2-10.

Both Commission Orders relied upon by Dr. Rearden were entered well after the conclusion of 2003, which is the reconciliation year at issue here. Thus, these two Orders were not in effect, nor even in existence, at the time of Nicor Gas' 2003 gas supply activities. Dr. Rearden's retroactive application of these Orders to Nicor Gas' conduct in 2003 is just the sort of hindsight analysis that is prohibited by the Commission's prudence standard. And, Dr. Rearden has admitted that the Commission may not retroactively apply its Orders to conduct in the past. Tr. 202:11-20 (Rearden). The Commission must, therefore, reject the first subpart of Dr. Rearden's proposed disallowance, because it is contrary to the Commission Orders entered in 1996 and still in effect in 2003 governing Nicor Gas' treatment of Hub revenues.

At the evidentiary hearing, Dr. Rearden appeared to disavow his reliance on these Commission Orders by stating that, in this proceeding, "all I'm doing is referring to the PGA rule." Tr. 202:6-20 (Rearden). According to Dr. Rearden, Section 525.40(d) provides that "if any costs used to supply a service are recovered in the PGA, all revenues must be used to offset those costs." Rearden Reb., Staff Ex 4.0, 6:127-7:147, 12:246-252. Yet, Section 525.40(d) would only come into play if the Hub loans caused Nicor Gas to incur PGA costs, which the evidence shows did not occur.

Further, in supporting their disallowances, both Dr. Rearden and Mr. Mierzwa rely upon pricing information that was not available to Nicor Gas personnel at the time the Company decided to enter into the subject Hub loan agreements. Specifically, in order to estimate the costs allegedly shifted to PGA customers by the Hub loans, Dr. Rearden and Mr. Mierzwa compared then-actual Chicago city-gate gas prices for select dates during an incomplete portion of the Hub loan period to the actual gas prices for select dates during the Hub re-fill period, and applied that price difference to the total Hub withdrawals, consisting of all types of Hub activity. Gulick Sur., Nicor Gas Ex. 7.0R, 6:126-130.

Yet, the evidence shows that Nicor Gas' decisions to make the majority of the Hub loans at issue took place in 2002, several months prior to the Company's actual Hub experience in 2003 or the daily prices occurring then. Sherwood Sur., Nicor Gas Ex. 6.0R, 10:180-185; Gilmore Reb., Nicor Gas Ex. 4.0, 9:177-182. In fact, approximately 84% of the total Hub loan balance as of March 31, 2003 was the subject of loan agreements entered into prior to the end of

2002 and 60% of the loans had actually occurred and been withdrawn from storage by December 31, 2002. Sherwood Sur., Nicor Gas Ex. 6.0R, 9:168-172. Thus, the vast majority of the volume of loans at issue here were the subject of decisions made many months before the Company's actual experience in 2003 at a time when Nicor Gas personnel could not have known what that experience would be. *Id*. at 10:183-187; Gilmore Reb., Nicor Gas Ex. 4.0, 9:182-185. And, even if Nicor Gas could have predicted future gas prices, it would not have impacted the loan decisions because, as discussed above, the Hub loans did not affect Nicor Gas' ability to withdraw gas for PGA customers and did not increase the cost of gas charged to PGA customers.

Accordingly, in addition to the reasons discussed above, the Commission should reject Dr. Rearden's and Mr. Mierzwa's disallowances because they applied a hindsight assessment, relying upon after-the-fact information that was not available to Nicor Gas personnel at the time the Company decided to enter into the Hub loan agreements. This sort of hindsight analysis is strictly prohibited by the Commission's prudence standard and, therefore, has no place in this proceeding.

VI. Conclusion

The evidence demonstrates that Nicor Gas' PGA charges for 2003 were reasonably and prudently incurred and the Company's Rider 6 reconciliation for 2003 therefore should be approved. The Commission should reject the disallowances proposed by Staff and CUB relating to the Company's Hub loan activities in 2003 because Staff and CUB have wholly failed to support their claims that the Company's Hub loan activities resulted in imprudent PGA charges. The Commission also should grant any other relief the Commission deems appropriate.

Dated: April 29, 2015

Respectfully submitted,

NORTHERN ILLINOIS GAS COMPANY
D/B/A NICOR GAS COMPANY

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CERTIFICATE OF SERVICE

I, Anne W. Mitchell, certify that I caused a copy of the Initial Brief of Nicor Gas Company to be served upon the service list in Docket No. 03-0703 by electronic mail, on the 29th day of April, 2015.

/s/ Anne W. Mitchell
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